

**Upper Lachlan Shire Council**

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Opening Hours: 9am – 4pm Monday to Friday

AGREEMENT FOR PERFORMANCE OF CERTIFICATION WORK

CONTRACT OF AGREEMENT

Environmental Planning & Assessment Act 1979

PARTIES TO THIS CONTRACT

This is an agreement between Upper Lachlan Shire Council ("Council") and the Applicant/s.

By virtue of the Environmental Planning & Assessment Act 1979 Council is a certifying authority and employs accredited certifiers (the Certifier) who are authorised to carry out the Certification Work which is the subject of this Agreement on behalf of the Council.

The Applicant seeks to engage the Council to perform certain Certification Work on the terms set out in this Agreement.

Applicant/Owner

Note: Only the person/company having the benefit of the development consent or complying development certificate may appoint the PC. The person having the benefit of a development consent does not include any contractor or other person who will carry out the building work unless the contractor or other person is the owner of the land on which the work is to be carried out.

Title	Given Name/s	Surname
Organisation / Company Name		
Address		Postcode
Preferred Contact Number	Email address	
Postal address (if different from above)		

2. The Upper Lachlan Shire Council

The Council is a certifying authority and employs accredited certifiers who are authorised to carry out certification work which is the subject of this Contract on behalf of Council.

PRINCIPAL CERTIFYING AUTHORITY (PCA)

Upper Lachlan Shire Council

44 Spring Street, CROOKWELL NSW 2583

Phone: 48301000

Email: council@upperlachlan.nsw.gov.au**PROPERTY LOCATION**

House No.	Street	
Suburb or Town		Postcode
Lot No.	Section (if applicable)	Deposited Plan (DP)

DESCRIPTION OF DEVELOPMENT Building Subdivision

Briefly describe the proposal:

CERTIFICATION WORK REQUESTED

This Agreement relates to the following Certification Work (please indicate by ticking all of the following that applies):

- Determination of application for, and issue of, a Construction Certificate*
- Determination of application for, and issue of, a Subdivision Works Certificate*
- Determination of application for, and issue of, an Occupation Certificate*
- Undertaking the functions of the Principal Certifying Authority (PCA) for the development (Refer to Attachment A for description of PCA functions and responsibilities of the Client)
- Determination of application for, and issue of, a Complying Development Certificate*
- Determination of application for, and issue of, a Compliance Certificate*
- Determination of application for, and issue of, a Strata Certificate*
- Determination of application for, and issue of, a Subdivision Certificate*
- Carrying out of inspections under section 22 of the Swimming Pools Act 1992 and issuing certificates of compliance under the Act

***These certificates are 'Development Certificates' for the purposes of this Agreement**

DETAILS OF CONSENT

Prior to being able to commence building or subdivision works a Development Application and Construction Certificate or a Complying Development Certificate must be obtained. Please provide details of the relevant approvals.

Development Application No.	Approval Date
Construction Certificate No.	Approval Date
Complying Development Certificate No.	Approval Date

APPLICANTS DECLARATION OF AGREEMENT WITH UPPER LACHLAN SHIRE COUNCIL

I/We acknowledge that the fees payable are calculated in accordance with Council's adopted Fees and Charges and are to be paid before or at the time of the lodgement of an application for a Development Certificate and/or before the Council commences to carry out any of the functions as the PCA.

I/We agree to provide all documents that the Council may reasonably request for it to perform the function of the PCA and/or Certifier.

I/We agree to provide Council with access to the development site. I/We agree to notify Council of the appointment of the principal contractor.

I/We agree to notify the principal contractor of any critical stage inspections required to be carried out in respect of the building or subdivision work. I/We acknowledge that I/we have received and understand the description of services as outlined within the Agreement.

I/We have freely chosen to engage the certifier

I /We has read the contract and any accompanying document and understands my/our responsibilities and those of the certifier.

Applicant Signature

Name

Date

STATUTORY OBLIGATIONS OF ACCREDITED CERTIFIERS

This contract must attach any document containing information about the statutory obligations of accredited certifiers that is published by the Department of Fair Trading for the purpose of Part 5 of the *Building & Development Certifiers Regulation 2020* and available on its website.

Accredited Certifier

Name Upper Lachlan Shire Council 44 Spring Street Crookwell NSW 2583	Phone 48301000	Email council@upperlachlan.nsw.gov.au
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Council employs accredited certifiers who are currently accredited by the Department of Fair Trading under the *Building & Development Certifiers Act 2018*. The employee that Council proposes, at the date of the Agreement, to carry out the Certification Work is nominated by the below list. Council may also engage temporary resources to undertake certification works when required. The Client is advised that to the extent that any inspections are required to be carried out under the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2021 for the Certification work; those inspections may be carried out by any one of the Council employees listed below who has the necessary accreditation for that work.

Council's Accredited Certifiers:

Brian Smithers BDC 1033

Simon Arkinstall BDC 1317

If Council later decides to have a different employee certifier carry out the certification work or the inspections, Council will notify the applicant in writing of the name and accreditation number of that other person. Council's Development Engineers are not required to be accredited under the Building & Development Certifiers Act 2018.

COUNCIL'S SIGNATURE

This Agreement has been signed for and on behalf of Council by an authorised officer:

Officer's first name	Officer's surname
Officer's position	
Signature of Officer	Date Agreement Endorsed:

Statutory Obligations

The NSW Department of Fair Trading is the statutory body that accredits Certifiers and administers the *Building & Development Certifiers Act 2018*.

A copy of the information sheet for certification contracts can be found at the following link:

<https://www.fairtrading.nsw.gov.au/trades-and-businesses/business-essentials/building-certifiers/certifier-forms>

Note:

Clause 31 of the Building & Development Certifiers Regulation 2020 states 'the contract must be accompanied by any applicable document containing information about the statutory obligations of accredited certifiers that is published by the Board for the purposes of this clause and available on its website'.

PRIVACY INFORMATION

Information on this form is collected by Council for administrative and assessment purposes. It will be used by Council staff for the purpose of processing your application. This application form and any supporting documents you provide may be made available for public access under the Government Information (Public Access) Act 2009.

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998 (PPIPA). The intended recipients of the personal information are officers within Council, data service providers engaged by the Council from time to time and any other agent of Council.

If you cannot provide, or do not wish to provide, the information sought, the Council may be unable to process your application. You may make application for access or amendments to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the PPIPA.

1. Introduction

The Environmental Planning and Assessment Act 1979 (EP&A Act) requires the appointment of a Principal Certifying Authority (PCA) to be responsible for the carrying out of mandatory critical stage building inspections and subsequent issue of an Occupation Certificate (OC) prior to the use or occupation of a building. The Environmental Planning and Assessment Act 1979 prohibits the commencement of the erection of a building in accordance with a development consent until:

- A Construction Certificate has been issued;
- A PCA has been appointed and the Client has notified the PCA that they will carry out the building work as an owner-builder (if that is the case),
- Where the Client is not carrying out the building work as owner-builder, the Client must have appointed a principal contractor for the building work who is the holder of a contractor licence (where residential building work is involved). The Client must notify the PCA of the appointment of the principal contractor and also notify the principal contractor of any critical stage inspections and other inspections required to be carried out for in respect of the building work,
- The PCA has, no later than two days before the building work commences, notified the consent authority of his/her appointment and notified the Client of any critical stage inspections and other inspections that are required to be carried out in respect of the building work, and
- The Client has given at least two days' notice to the Council (and the PCA if that is not the Council) of the person's intention to commence the erection of the building. Similar requirements apply to the commencement of subdivision work. This Attachment sets out the responsibilities of the Client and the Council (when engaged by the Client to act as PCA).

2. Dictionary

Accredited Certifier means the holder of a certificate of accreditation as an Accredited Certifier under the *Building & Development Certifiers Act 2018*.

Applicable Environmental Planning Instrument means the State Environmental Planning Policy or the Local Environmental Plan nominated by the Client (Owner) as the instrument against which an application for a Complying Development Certificate is to be assessed.

B&DC Act means the *Building & Development Certifiers Act 2018*.

Certification Work means:

- the determining of an application for a development certificate
- the issue of a development certificate
- carrying out the functions of a PCA
- carrying out of inspections for the purposes of Section 6.5 of the EP&A Act
- carrying out inspections under section 22 *Swimming Pools Act 1992* and issuing certificates of compliance under that Act

Contractor licence means a licence issued under the *Home Building Act 1989*

Development certificate means:

- a certificate under Part 6 of the EP&A Act, being:
- a construction certificate, a compliance certificate, a sub-division certificate or an occupation certificate
- a complying development certificate
- a strata certificate issued under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*

EP&A Act means the *Environmental Planning and Assessment Act 1979*

EP&A Regulation means the Environmental Planning and Assessment Regulation 2021

Owner-builder permit has the meaning given to it by the *Home Building Act 1989*

Principal Certifying Authority (PCA) : The PCA is the authority appointed by 'the Client' (being the person having the benefit of the development consent or complying development certificate) under section 6.5 of the EP&A Act. A PCA may either be Council or an accredited private certifier (except in certain circumstances).

Note:

Council accredited Certifiers, as the PCA cannot be involved in the design of the building/development works; but may offer advice for compliance with Deemed to Satisfy BCA matters.

When Council has been appointed as the PCA, a change of PCA can only be undertaken upon agreement of Council or as determined by the Building Professionals Board.

Owner-builder permit has the meaning given to it by the *Home Building Act 1989*

Residential building work has the meaning given to it by the *Home Building Act 1989*

3. Home Building Act 1989

Home Building Act 1989 requirements in case of building work that involves residential building work (within the meaning of the

Home Building Act 1989) **attach** the following:

- In the case of work by a **licence** under that Act:
 - A statement detailing the **licensee's name and contractor licence number**, and
 - Documentary evidence that the licensee has complied with the applicable requirements of that Act*,
OR
- In the case of work done by any other person:
 - A statement detailing the **person's name and owner-builder permit number**, or
 - A declaration signed by the owner of the land, to the effect that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of *owner-builder work* in section 29 of the Act.

* A **certificate** purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a **person is the holder of an insurance contract** issued for the purposes of that Part, is sufficient evidence that the person has complied with the requirements of that Part

4. Fees and charges

Development Certificates and PCA Functions

1. Set fees and charges:

- a. The fees and charges for the determination of an application for a development certificate and to carry out the functions as the PCA for the development are set out in Council's fees & charges schedule.
- b. The set fees and charges for the determination of a development certificate and for the carrying out of the functions as the PCA for the development must be paid to the Council before, or at the time, an application for the development certificate is lodged with the Council.

2. Contingency fees and charges:

- a. In the case of fees and charges that may be payable for work arising from unforeseen contingencies, the basis on which those fees and charges are to be calculated are set out in Council's fees & charges schedule.
- b. In respect of any unforeseen contingency work provided for under this Agreement, the Council is to send an invoice to the Client (Owner) within 21 days after the completion of any such work.

3. Functions:

- a. For the Council to determine applications for a development certificates and carry out the functions as the PCA for the development as set out in this agreement.

Fixed Fee Agreement

Council will undertake for a fixed fee all work involved in assessing, determining and finalising the application as set out in the Attachment B, including the costs of any service provided by a third party and any fees for obtaining or lodging documents, **except** for contingency items (if any) specified in Council's adopted fees & charges.

Contingency items#*

- a) Re – Inspection Fees (in accordance with Council's adopted Fees & Charges)
- b) Additional Inspection Fees (in accordance with Council's adopted Fees & Charges)

Quality of Service

1. The PCA will carry out the Inspection Services set out below in a professional manner and in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 (the Act) and Council's Code of Conduct

Site signage

2. The PCA will provide you with a sign to erect on site. This sign will advise the public of the PCA contact details.

Under the EP&A Act a PCA has a range of functions, including:

3. Ascertaining, before any building work has or subdivision work commences, that a construction certificate or complying development certificate has been issued for the work;
4. Ascertaining, before any residential building work commences, that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989, unless the work is to be carried out by an owner-builder;
5. Where the work is being carried out by an owner-builder, ascertaining that the owner-builder is the holder of any owner-builder permit required under the Home Building Act 1989, before an owner builder commences on the site of any residential building work;

Inspection services

6. The PCA will:
 - (i) Undertake inspections of the building work described as a 'critical stage inspections' during construction;
 - (ii) Decide whether the building works comply with:
 - (A) The Development Consent;
 - (B) The Construction Certificate;
 - (C) Complying Development Certificate (where applicable);
 - (D) The Building Code of Australia; and
 - (E) Any other relevant standards of construction; and
 - (iii) Make a written record of the inspection and provide a copy to the relevant owner and/or applicant.
 - (iv) Advise the Client of the details of the work the subject of an unsatisfactory inspection and the need (if any) to carry out a reinspection.

If, after a critical stage inspection, the building works are determined by the PCA to be unsatisfactory then the PCA may issue a notice requiring certain works to be carried out so as to bring the building work into compliance with the items set out in (iv) above.
 - (v) Notify the Client if any additional fees for inspection and required as a result of reinspection for incomplete or defective works. Reinspection fees will be levied and payable for all reinspections required as a result of work not being completely ready for the booked inspection or as a result of defective works.
7. Issue an Occupation Certificate where the development is completed in accordance with the provisions of the Act and conditions of Development Consent or the complying development certificate.

Critical Stage Inspections

Critical Stage Inspections will be set out within the Construction Certificate (if issued by Upper Lachlan Shire Council) and may include but not be limited to the following:

- After excavation (prior to placement of footings)
- Foundation / footings (prior to pouring of concrete)
- Framework (prior to fixing floor, wall and ceiling linings)
- Waterproofing of wet areas (prior to covering)
- Stormwater Drainage (prior to covering)
- Other as specified by PCA
- Finalisation of works (all works completed)

Note: Inspections will be carried out Monday, Tuesday, Thursday and Friday only excluding Public Holidays.

The Client, in appointing Upper Lachlan Shire Council as the PCA agrees to:

Copies of agreement

1. You must provide a copy of this agreement to the Principal Contractor/ builder, prior to the commencement of any building works.

Inspections and inspection bookings

2. Details of all critical stage inspections will be set out on the approved Construction Certificate.
3. You must give Council a minimum of **48 hours notice** (excluding weekends and public holidays) to enable the critical stages of construction to be inspected. Urgent inspections may be possible by arrangement.
4. Inspections must be booked in by contacting Council's Environment & Planning Department on **02 48301000**.
5. You agree the building works will not proceed to subsequent stages of construction prior to obtaining approval from Upper Lachlan Shire Council as PCA for each stage of construction specified in the approved Construction Certificate.
6. You agree to allow Upper Lachlan Shire Council as PCA to inspect the premises to ensure that the completed works comply with the development consent or complying development certificate.
7. You acknowledge that a failure to give correct notification of required inspections may result in the issuing of a Notice and Order by the PCA and may result in the refusal to issue an Occupation Certificate.
8. You acknowledge that unsatisfactory or incomplete works at the time of inspection will be subject to an additional inspection and additional inspection fee. Any additional inspections over and above those nominated on the Construction Certificate will be charged at Council's standard rate at the time of the inspection and must be paid prior to issue of the Occupation Certificate.

Compliance notice

9. Where a Notice requiring works to be carried out is issued by Upper Lachlan Shire Council as PCA, you agree to:-
 - (i) Carry out (or cause to be carried out) the works, as set out in the Notice; or
 - (ii) Make representation to the PCA as to the works which are the subject of the notice.

Structural Engineering and other specialist details

10. The following details must be forwarded to Upper Lachlan Shire Council as PCA prior to commencement of construction.
 - (i) Structural engineering plans and specifications;
 - (ii) Any specialist details as required by the PCA
11. The details are to be prepared by a suitably qualified person and are to confirm compliance with the relevant provisions of the Building Code of Australia and Australian Standards to the satisfaction of Upper Lachlan Shire Council as PCA.

Certification of works

12. You will provide certification to Upper Lachlan Shire Council as PCA, documentation verifying that the following specialist matters have been carried out in accordance with the relevant requirements of the Building Code of Australia and relevant Australian Standards:-
 - (i) Installation of termite management system by a licensed installer; and
 - (ii) Waterproofing of wet areas by the accredited waterproofer; and
 - (iii) Installation of glazing by a licensed builder; and
 - (iv) Installation of smoke alarms by a licensed electrician; or
 - (v) Any matters as required by the PCA
 - (vi) Or any other document deemed necessary by there certifier
13. Each of the above certificates is required to be prepared by an accredited certifier or other suitably qualified and experienced person and must reference the subject property, the relevant provisions of the Building Code of Australia, relevant Australian Standards and the approved plans, to the satisfaction of Upper Lachlan Shire Council as PCA.

Occupation Certificate

14. You agree to obtain an Occupation Certificate prior to the occupation or use of a new building (or part of a building) or prior to the change of an existing building use/classification.
15. You acknowledge that non-compliance with any part of the Development Consent, Construction Certificate, Complying Development Certificate, Building Code of Australia or other relevant standard of construction may result in a refusal to the issue of an Occupation Certificate.
16. You must submit an application for an occupation certificate, completing the relevant form and including all relevant attachments. A copy of the form can be found on Council's website. Notwithstanding this, acceptance of this agreement constitutes an application to the Principal Certifying Authority for an occupation certificate.
17. You acknowledge that, to issue an occupation certificate for the development, Upper Lachlan Shire Council as PCA is required to ensure compliance with the provisions of the Act and conditions of development consent including the submission of fire safety certificates where applicable.
18. You agree that it is your responsibility to ensure that all works comply with the approved plans and conditions of development consent.

Service Fees

19. You agree to pay the relevant fees for the PCA inspection services ("the fees") and certification services as specified in Upper Lachlan Shire Council's Fees and Charges Schedule.
20. You agree to pay all relevant fees prior to the release of the Construction Certificate.
21. You agree that additional, or repeat, inspections, or unnecessary callouts will be charged at the standard re-inspection fee rate specified Upper Lachlan Shire Council's Fees and Charges Schedule and must be paid prior to the issue of an Occupation Certificate.

Change of details

22. You agree to notify Upper Lachlan Shire Council as the PCA in writing of any changes in your details or address or Builder's details or address. Site signage
23. You agree:
 - (vii) (i) to erect the PCA sign identifying Upper Lachlan Shire Council as the PCA;
 - (viii) (ii) that you will maintain that signage until the Occupation Certificate is issued; and
 - (ix) (iii) that the signage will be removed once the Occupation Certificate is issued.

Conditions of approval

24. You are required to comply with all conditions of development consent, complying development certificate and / or construction certificate.

Information about registered certifiers – building surveyors and building inspectors

Important: this is a summary document only.

Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Fair Trading website has more information about certifiers.

Under section 31(2) of the *Building and Development Certifiers Act 2018* and clause 31 of the *Building and Development Certifiers Regulation 2020*, a contract to carry out certification work must be accompanied by an applicable document made available on the website of the Department of Customer Service (which includes NSW Fair Trading)¹. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

This document summarises the statutory obligations of the registered certifier who will assess your development and your obligations as the applicant for the development. It also sets out the types of information that can be found on Fair Trading's online register of registrations and approvals.

Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

Who does a registered certifier work for?

A registered certifier is a public official and independent regulator, registered by the Commissioner for Fair Trading.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of \$110,000 and/or two years imprisonment.

¹ Visit www.fairtrading.nsw.gov.au and search 'certification contracts'.

Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

What does a registered building surveyor do?

Registered **building surveyors** issue certificates under the *Environmental Planning and Assessment Act 1979* (construction certificates, complying development certificates and occupation certificates), act as the **principal certifier** for development, and inspect building work.

The principal certifier will attend the site to carry out mandatory inspections at certain stages. When construction is complete, the certifier may issue an occupation certificate, which signifies that the work:

- is 'suitable for occupation' – this does not necessarily mean all building work is complete
- is consistent with the approved plans and specifications
- meets all applicable conditions of the approval.

The certifier does not manage or supervise builders or tradespeople or certify that the builder has met all requirements of the applicant's contract with the builder.

What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work² with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

² Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.

Principal certifier enforcement powers

If the principal certifier becomes aware of a non-compliance with the development approval, the certifier must, by law, issue a direction to you and/or the builder, requiring the non-compliance to be addressed. If it is not, the certifier must notify the council which may take further action.

The certifier is also required to respond appropriately if a complaint is made about the development.

Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at www.fairtrading.nsw.gov.au:

- [Details of registered certifiers](#) (or search 'appointing a certifier' from the homepage)
- [Disciplinary actions against certifiers](#) (or search 'certifier disciplinary register' from the homepage).

Questions?

The Fair Trading website www.fairtrading.nsw.gov.au has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '[what certifiers do](#)' for information about a certifier's role and responsibilities.
- Search '[concerns with development](#)' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at www.planningportal.nsw.gov.au provides information on the NSW planning and development certification system.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Fair Trading website for more information.

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